

89- 1545

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JOSEPH F. SPANIOLO, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

JAMES D. QUARTERMAN and
BARBARA JEAN QUARTERMAN

PETITIONER

V.

COMMISSIONER OF INTERNAL
REVENUE,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

JAMES D. QUARTERMAN/PCP
BARBARA J. QUARTERMAN/PCP
C/O 567 KELL ROAD
BRUNSWICK, GA. 31520

QUESTION PRESENTED

A. DOES A PRIVATE CONTRACTING
PARTY HAVE THE RIGHT TO PROTECT HIS
PAYCHECK, BY NOT REFERRING TO IT AS
INCOME WHEN IN FACT IT IS GROSS RECEIPTS.



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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petitioner, James D. Quarterman and Barbara J. Quarterman respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above entitled case on December 8, 1989.

I.

OPINION BELOW

The memorandum opinion of the Court of Appeals is attached as Appendix A. Opinion by Judge Thomas B. Wells was issued by his orally stated findings, facts and opinions, issued February 8, 1989. Pursuit to the authority granted by section 7459(b) of the Internal Revenue Code of 1986 and Rule 152.

II.

JURISDICTION

The alledged opinion of the Court of Appeals for the Eleventh Circuit was filed on December 8, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C 1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the
Constitution provides:
Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the

same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**The Sixth Amendment of the
Constitution provides:
Amendment VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

The Seventh Amendment of the
Constitution provides:
Amendment VII

In Suits at common law, where the
value in controversy shall exceed twenty
dollars, the right of trial by jury shall
be preserved, and no fact tried by a
jury, shall be otherwise re-examined in
any Court of the United States, than
according to the rules of the common law.

The Thirteenth Amendment of the
Constitution provides:
Amendment XIII.

Section 1. Neither slavery nor
involuntary servitude, except as
punishment for crime whereof the party
shall have been duly convicted, shall
exist within the United States, or any
place subject to their jurisdiction.

(Emphasis added to pertinent section)

STATEMENT OF FACTS

In April of 1983 I, (we); filed a copy of a 1040X Form for 1982. I, (we); were fined \$500.00 for what an IRS auditor called a frivolous form. By letters and phone calls I have asked the IRS for a form other than a 1040, that I might fill out and not have to call the property that I sale and deliver to my Contractors an income.

During 1983, I, (we) gradually became aware of and studied information concerning the tax laws of the United States, court decisions in tax cases, and public information releases of the Internal Revenue Service. I, (we) learned that the administration of the IRS operates an unlawful system of deception, intimidation, fear, injury,

and fraud against the liberties, privacy rights, and properties of the natural, private individuals living within the asserted jurisdiction of the United States.

Particularly that IRS information was illogical, deceptive, and contradictory, and utilized circular reasoning. I, (we) found that IRS positions and practices were based on presumption and creation of fiction as substitutes for proper findings of fact for a proper basis for a case. I, (we) discovered that the IRS formed conclusions that were guided by deliberate and injurious misapplications of the law and decisions of the courts of the U.S., in order to exact resources and wealth from the people that had not been intended or authorized.

Then, I, (we) found that the notices and rules utilized by the IRS had never been approved or published in the Federal

Register, as required pursuant to 44 U.S.C. 1505. The requirements for publication of such notices and rules was admitted by the IRS in 26 C.F.R. 601.702 a (2)(ii), and thereby such notices and rules were without force or effect as a matter of law. I, (we) learned from the IRS privacy Act Notice, unofficial as it is, of the existence of the Privacy Act, 5 U.S.C. 552a(e)(3), and of jurisdictional section 6001 of the internal revenue code. I, (we) learned that the IRS blatantly violates these provisions of law for protection of private rights, by failing to give proper notices and statements of authority.

On November 10, 1984 and on June 3, 1985 during an examination of the documents as "tax returns", I, (we) presented the foregoing allegations of fraud against my liberty, privacy and property.

Therefore, I, (we) rescinded my signatures on the 1982 forms, all W2's and all 1099 and forms pertaining to them. Upon our allegations of the fraud of the IRS. (see photo copies). Subsequently the examiner, (failing to find and adhere to the facts I, (we) presented.) The agent's created further fictions of "income" and "adjustments to tax" based upon fraudulent presumptions of fact and prejudicial misrepresentations of our position. The report cited various irrelevant and inapplicable provisions of statutory law.

PROPOSED FINDING OF FACT

I (or my wife and I) am a natural and private individual who was born in the United States upon an act of my Creator God. I owe allegiance solely to my Creator, from whom I have received gifts of inalienable rights to life, to liberty, to privacy, to property and

labor, and to contract. These gifts enable me to pursue happiness and to acquire, enjoy, and dispose of properties and contracts.

I am a sovereign in the political structure of the South East wherein I live, and also in the "federal" Union known as the United States of America. I live and act solely by exercise of my Creator's inheritance and my common rights, and solely as a private individual.

I have NEVER knowingly requested, received, exercised nor benefitted from any privilege or monopoly granted me by and agency or instrumentality of government. Nor have I lived and acted as any kind of public, enfranchised, or artificial person.

I engage in an occupation of common right. I contract with other persons and parties for the sale and delivery of certain properties I own, including the

property and rights to property in my LABOR. My labor was acquired by me through a continuing gift from my Creator as the donor. My Creator is a nonresident; not a citizen of the U. S.

The cost basis I have inherited in this property is unknown to me. Each unit of property I received was acquired by the donor immediately prior to the gift to, receipt by, and subsequents sale by me of the property.

The fair market value of the property, and therefore the substitute cost basis in the gift as should be determined by the Commissioner, is equal to that which I received in the sale and delivery of the property made during the period of each year.

ARGUMENT AND AUTHORITIES OF LAW

By the authority of the jurisdictional provisions of the I.R. code, section 7601 authorizes the

Commissioner first to conduct a "canvass of Districts for Taxable Persons and Objects."

Then section 6001 authorizes and inquiry to find preliminary and limited factual information to determine which persons are, and which person are not, "taxable persons" or "taxpayers" with "taxable years". The Commissioner may make such an inquiry of any and all persons and objects, including individuals, pursuant to this authority to acquire jurisdictional facts for the record.

The statutory terminology for "taxable person" is a "person liable for tax," as given in section 6001, which states in pertinent part: "Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such

rules and regulations as the Commissioner may from time to time prescribe.

Whenever in the judgment of the Commissioner it is necessary, he may require and person, by notice served upon such person or by regulations, to make such return, render such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable for tax under this title."

The I.R. regulations of 1.6001 that have been promulgated do NOT provide examples or explanation for BASIS IN FACT with respect to how an INDIVIDUAL who is NOT a "person liable" is distinguished from those other persons who are a "person liable for tax."

The silence of the code and regulations concerning how to make this factual distinction leaves it to the voluntary admission of those persons who

are a "person liable for tax," and to the assertive denial of those who are NOT.

Thereby such regulations of section 1.6001 do not provide any additional explanation of the jurisdictional authority of the Commissioner over persons, no the limits of such authority, nor upon what fact circumstances the authority is applicable.

I.R. regulations 1.6001-1(a) state concerning records: "(a) in general. Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information. (b) * * *

It is NOT necessary, however, that with respect to such income INDIVIDUALS keep the books of account or records required by paragraph (a) of this section." ...[I,(we) have determined that we are not a person liable.]

THE IMPOSITION OF THE "TAXABLE INCOME"
TAX DOES NOT PROVIDE A CONNECTION TO
RELEVANT FACT

The tax at issue that is imposed by this title an referred to in section 6001 arises from section 1(a) of the code, which reads in pertinent part: "There is hereby imposed upon the taxable income of every married individual** who makes a single return jointly with his spouse ** a tax determined in accordance with the following tables." Several other alternative paragraphs of section 1 offer slightly different wording and conditions, but all purport to impose a tax upon taxable income.

This basic statute itself is written with circular reasoning, when some UNSTATED condition of "income" must be sought to find out whether the "income" is TAXABLE before it can be TAXED!

Individuals who are not "persons liable for tax" are also not a "person subject to tax," and are not "taxpayers," as defined in code section 7701(a)(14): "The term "taxpayer" means any person subject to any internal revenue tax." Such individuals have no income taxes imposed under subtitle A, and they have no "taxable year" pursuant to section 7701(a)(23) which is only established by a "return". Further, such individuals are under no obligation to "comply with the rules and regulations of the Commissioner, nor to make "returns with respect to income taxes under subtitle A, "nor to "keep the books of account or records."

For those persons who are "taxpayers" "liable for any tax" as determined pursuant to the Commissioners inquiry authorized by section 6001, and only for those "person liable," I.R. Code section 6011 states in pertinent part, "When required by regulations prescribed by the Commissioner any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Commissioner."

THE CODE IS SILENT ON WHAT FACTS MAKE
AN INDIVIDUAL LIABLE FOR TAX

For those persons who are "taxpayers" "made liable for an tax" as determined pursuant to sections 6001 and 6011, and only for those "persons liable," I.R. Code section 6012 states in pertinent part, "Returns with respect to income taxes under subtitle A shall be made by the following: (1)(A)

Every individual having for the taxable year a gross income of the exemption amount or more, except that a return shall not be required of an individual (other than an individual referred to in subparagraph (c) ** etc.," following which are various EXCEPTIONS for those who ARE "person liable" but who need NOT make "returns."

An individual shall be subject to "income taxes under subtitle A," if he is said to "have" the fiction of "gross income" upon the condition of a "taxable year." But he will have a "taxable year" ONLY WHEN AND IF he is a "person liable for tax." Further, such individual shall be subject to the "rules and regulations of the Commissioner" including the requirement to "make" "returns with respect to income taxes under subtitle A."

But the code itself is silent on just what set relevant FACTS create the fiction of "gross income" and "taxable years," and can be used by the Commissioner as a basis for making a natural, private individual a person liable for tax.

NO LEGAL OR EFFECTIVE TAX NOTICE ON
WHO IS LIABLE HAS EVER BEEN PUBLISHED IN
THE FEDERAL REGISTER

The only alternative to a provision of tax law can be a regulation, rule, executive order, or notice to each individual of the factual basis for being a person liable for tax. The Federal Register Act, section 1505 of Title 44, provides that:..documents having general applicability and legal effect [are] required to be published by Congress.*** Every document or order which prescribes a penalty has general applicability and legal effect.

Document means a Presidential proclamation or Executive Order and an order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument, issued, prescribed, or promulgated by a Federal Agency." The IRS admits in 26 C.F.R. 601.702 a(2)(ii) to the applicability of this requirement for publication in the Federal Register if the matter can "...adversely change or affect a person's rights."

However, the Privacy Act Notice provided by the IRS has never been published in the Federal Register, nor has the W-2 W-4, or 1099 forms and certificates promulgated by the IRS. Further, in the Freedom of Information Act, 5 U.S.C 552 (a)(1)(D), "...substantive rules of general applicability adopted as authorized by law, and statement of general policy or

interpretations of general applicability formulated and adopted by the agency.." are REQUIRED to be published in the Federal Register. Section 552(a)(1)(E) further states, "Except to the extent that a person has actual and timely NOTICE of the terms thereof, a person may not be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published."

Even the disclosures in the Privacy Act Notice printed in the for 1040 instruction manuals do not meet the requirements of the Privacy Act, 5 U.S.C 552a(e)(3), due to their never being published in the Federal Register.

Thereupon no matter concerning jurisdiction sections, section 6001 and 6011 of the internal revenue code, identified in the unpublished Notice, cannot adversely affect private right and immunities.

NEITHER PRIVILEGE AS SUBJECT NOR FICTION
AS OBJECT OF TAX MAKE ME A PERSON LIABLE
FOR TAX WITHOUT FACT AND NOTICE

The facts of this case show that I have not knowingly requested, received, nor exercised any government privilege or benefit that might be notice as the factual basis and SUBJECT for being a person liable for tax. Further, there can be no fiction of law created in equity, supposedly for the furtherance of justice, that materially impairs and abridges my substantive rights to liberty, privacy and property. No such fiction can compel me to performance or provide sanctions and punishment for omission of alleged duty thereupon.

Thereby, no fiction of "wages," "income," "return," or "filing," "compensation" can be created by operation of law and employed as a substitute for relevant and real facts as

the SUBJECT of an indirect and uniform tax. Such fictions must be restricted to OBJECT or MEASURES of tax otherwise arising properly upon privilege or benefit, voluntarily entered and agreed by the individual as an obligation in assumpsit.

Whether the fiction of "income" is the wrongful SUBJECT or the proper OBJECT of an unknown SUBJECT, there has been no TIMELY NOTICE provided me that might have provided me an opportunity to be heard as required by DUE PROCESS OF LAW.

Thereupon without notice, no impairment or abrogation of my substantive rights to liberty, privacy, and property can be imposed.

Not even the existence and past use of a so-called "social security number" and submission of form 1040 "returns" can provide a secret and silent factual basis for a continuing tax, as measured upon "income," when no NOTICE of such

obligation was provided to me at the time the "number" was voluntarily requested and acquired, or the "return" first solicited and secured, especially in an environment of fraud.

In the total absence of NOTICE to me OTHERWISE of the relevant facts or circumstances upon which it could be determined that I was a person liable for tax, I have determined that I am NOT a person liable for tax, within the meaning of sections 6001 and 6011, and within all the rules for providing due process and essential justice, whether in an administrative or judicial proceeding.

COMPUTATION OF GROSS INCOME FOR PERSON
LIABLE FOR TAX

For the sake of argument, and for those who are "persons liable for tax," the I.R. code purports to define "gross income" by example of items.

For the circumstance of this case, the facts relate to the sale of property that might be classified as a sole proprietorship. Relevant to those facts, section 61(a) states: "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but limited to) the following items: Gross income derived from business; Gains derived from dealing in property .."

I.R. regulation 1.61-3(a) explains "gross income derived from business" to be: "In general. In a manufacturing, merchandising, or mining business, "gross income" means the total sales, less the cost of goods sold...** The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer."

I.R. regulation 1.1161-6(a) explains "gains derived from dealing in property" to be: "In general. Gain realized on the sale or exchange of property is included in gross income, unless excluded by law.

For this purpose property includes tangible items, such as a building, and intangible items, such as goodwill.

Generally, the gain is the excess of the amount realized over the unrecovered cost or other basis for the property sold or exchanged. The specific rules for computing the amount of gain or loss are contained in section 1001 and the regulations thereunder. Gain or loss shall be determined at the time of sale of part [of property] and not deferred until the entire property has been disposed of."

THE FACTS CONCERN THE SALE OF NON-
CAPITAL PROPERTY ACQUIRED BY TRANSFER
UPON A GIFT

For the sake of argument and for "taxpayers," that is those persons who are "persons liable for tax," the I.R. code states in section 1001(a), "Computation of Gain or Loss.--The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized."

Again for "taxpayers," those persons who are "person liable for tax," the I.R. code states in section 1011(a), "General Rule.--The adjusted basis for determining the gain or loss from the sale or other diposition of property, whenever acquired, shall be the basis

(determined under section 1012 or other applicable section of this subchapter..." The facts of this case show that the property (of labor) that was sold WAS ACQUIRED BY GIFT, which applicable I.R. code section is 1015, "Basis of Property Acquired by Gifts and Transfer in Trust."

The cost or other basis in PROPERTY ACQUIRED BY GIFT is given in pertinent part in section 1015:"..The basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donor, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds it impossible to

obtain such fact, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last proceeding owner." I.R. regulation 1.1015-1(a)(3) is applicable to the facts herein, but it only confirms and repeats verbatim the statutory provisions.

Regulation 1.1015(g) states concerning record for substantiating fair market value: "To insure a fair and adequate determination of the proper basis under section 1015, person making or receiving gifts of property should preserve and keep accessible a record of the facts necessary to determine the cost of the property, and if pertinent, its fair market value as of the date of the gift."

It is well know that fair market value is that price that would be established for the sale of property by contract, namely what a willing buyer would pay a willing seller for the property, both parties being competent and having full knowledge of the relevant facts, and neither party being under any coercion to buy or sell. The property in this case was sold by contract immediately after the same time as the donor acquired the property, the sale itself thereby meeting all the conditions for determining fair market value within the meaning of section 1015.

Section 1016(b) further defines this procedure for determining a "substituted cost basis" for circumstances like mine, where the cost or other basis of the donor is unknown and indeterminable to me, but the time at which the donor acquired the property is know.

THE PROPERTY IS PERSONAL PROPERTY
WITHOUT TRANSFEREE LIABILITY FROM
NONRESIDENT TRANSFEROR-DONOR NOT A
CITIZEN

Section 2501(a)(2) provides that no gift tax be imposed upon the transfer of personal property by a nonresident transferor-donor not a citizen of the United States. The facts of this case fit the circumstances of this total exemption from tax, indicating the wisdom of Congress in not attempting to tax the action of the ultimate sovereign of all individuals, our Creator.

Further, in these circumstance, there can be no transferee liability upon receipt of the gift of personal property, within the meaning of section 6901. Even if I were a person liable for tax, which as been disproven, there would be no tax imposed upon these factual circumstances.

V.

REASONS FOR GRANTING THE WRIT

A. This case provides this Court with an opportunity to vacate or revise the orally stated opinion of the Judge's which was unpublished, (see appendix A). And to allow the petitioners to proceed with our lives as private contracting parties.

VI.

CONCLUSION

WHEREUPON, it has been conclusively proven upon proper basis in law and fact in the administrative record that I am not a persons liable for any federal income tax imposed by the internal revenue code. Further, even if I were a person liable, I derived and computed no income upon the sale of property acquired by gift from my Creator, that is my labor, skills and abilities, when I obtained, pursuant to contract and exercise of common right, no more than the fair market value of the property in the sale.

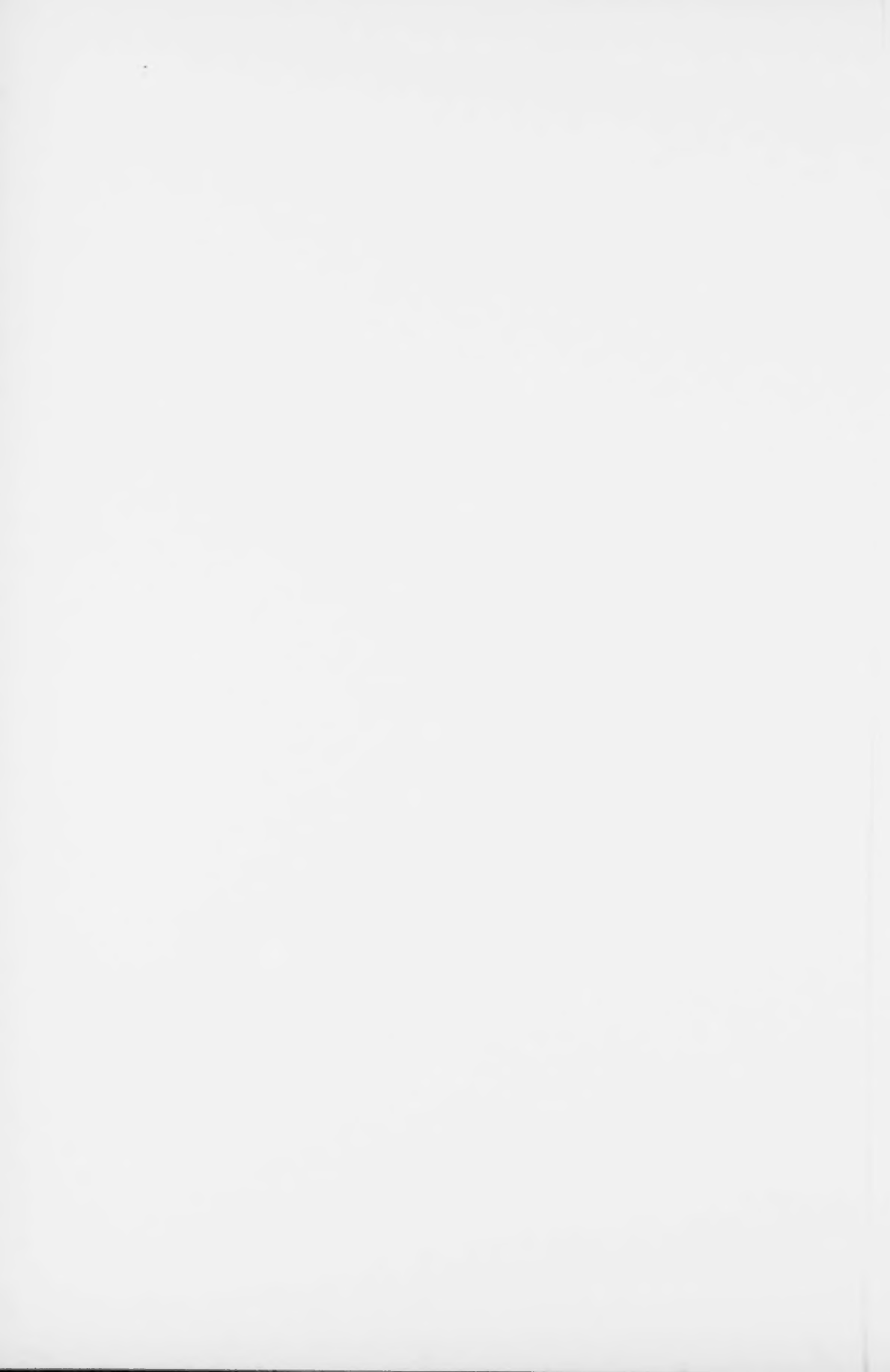
FURTHER, it has been shown that the internal revenue service has been practicing deception, injury, and fraud in its attempts to extort income taxes from me, through institutional schemes

for disregarding and ignoring relevant facts, coupled to deliberate and intentional misapplication of the law.

The REQUEST FOR REFUND must be granted in its entirety, with the award of my cost and quantum meruit to me for being required vigorously to defend against the fraud. The Preliminary Report of the agent must be disregarded.

Respectfully Submitted ,

J. D. Quarterman/PCP
and or
Barbara J. Quarterman/PCP
C/O 567 Kell Road
Brunswick, Ga. 31520



Alleged Bench Opinion by Judge Thomas B. Wells, Docket Numbers 17078-88 and 17080-88, February 8, 1989

The Court has decided to render oral findings of fact and opinion in this case, and the following represents the Court's oral finding of fact and opinion.

These are the consolidated cases of James D. Quarterman, Petitioner, versus Commissioner of Internal Revenue, Docket Number 17078-88, and Barbara Jean Quarterman, Petitioner, versus Commissioner of Internal Revenue, Respondent, Docket Number 17080-88.

This bench decision is made pursuant to the authority granted by Section 7459(b) of the Internal Revenue Code of 1986 and Rule 152, Tax Court Rules of Practice and Procedure.

All section references are to the Internal Revenue Code of 1986, effective for the years at issue.

Respondent determined the following deficiencies and addition to tax against James D. Quarterman: For taxable year ended December 31, 1982, the deficiency determined is \$8,094.00, the addition to tax under 6651(a)(1) is \$1,616.18, the addition to tax under 6653(a)(1) is \$404.70 penalty, the addition to tax under 6653(a)(2) is determined to be 50 percent of the interest due on \$3,387.55, the addition to tax under Section 6664 was determined to be \$215.26, and the addition to tax under 6661 was determined to be \$2,023.50.

For taxable year ended December 31, 1983, the deficiency determined was \$4,983.001; 6651(a)(1) penalty was \$838.43; 6653(a)(1) penalty addition to tax under 6653(a)(2) was determined to be 50 percent of the interest due on \$3,353.72; the addition to tax under 6654 was determined to be \$180.29.

For taxable year ended December 31, 1984, the deficiency was determined to be \$4,690.00; the addition to tax was determined under 6651(a)(1) to be \$1,170.00; the addition to tax under 6653(a)(1) was determined to be \$234.00; the addition to tax under 6653(a)(2) was determined to be 50 percent of the interest due on \$4,680.00; the addition to tax under 6654 was determined to be \$327.60.

For taxable year ended December 31, 1985, the deficiency was determined to be \$8,650.00; the addition to tax under 6651(a)(1) was determined to be \$2,162.50; the addition to tax under Section 6653(a)(1) was determined to be \$432.50; the addition to tax under 6653(a)(2) was determined to be 50 percent of the interest due on \$8,650.00; the addition to tax under 6654 was determined to be \$556.00; and the addition to tax under 6661 was determined to be \$2,162.50.

With respect to Petitioner Barbara Jean Quarterman, the Respondent determined the filing deficiencies and additions to tax.

\$2,368.00; the addition to tax under 6651(a)(1) was determined to be \$402.27; under Section 6654 was determined to be \$86.84.

For taxable year ended December 31, 1984, the deficiency was determined to be \$2,528.00; the addition to tax under 6651(a)(1) was determined to be \$627.50; the addition to tax under 6653(a)(1) was determined to be \$126.40; the addition to tax under 6653(a)(2) was determined to be 50 percent of the interest due on \$2,510.00; the addition to tax under Section 6654 was determined to be

For taxable year ended December 31, 1982, the deficiency was determined to be \$4,081, the addition to tax under 6651(a)(1) was determined to be \$482.45; the addition to tax under 6653(a)(1) was determined to be \$204.05; the addition to tax under 6653(a))(2) was determined to be \$174.47.

For taxable year ended December 31, 1985, the deficiency was determined to be \$2,763.00; the addition to tax under 6651(a)(1) was determined to be \$664.00;

be 50 percent of the interest due on \$1,929.82; the addition to tax under Section 6654 was determined to be \$135.51.

For taxable year ended December 31, 1983, the deficiency was determined to be the addition to tax under 6653(a)(1) was determined to be \$118.40; the addition to tax under 6653(a)(2) was determined to be 50 percent of the interest due on \$1,609.10 interest, the addition to tax the addition to tax under 6653(a)(1) was determined to be \$138.15; the addition to tax under 6653(a)(2) was determined to be 50 percent of the interest due on \$2,656.00; the addition to tax under Section 6654 was determined to be \$177.00.

31, 1982, for that year, \$4,706.35; and for the year ended December 31, 1983, in the amount of \$1,629.28.

Prepayment credits were also determined in the statement attached to the notice of deficiency through December 31, 1982, \$2,151.18; for December 31, 1983, \$758.90; for taxable year ended December 31, 1984, \$18.00; and for taxable year ended December 31, 1985, \$107.00.

With respect to Petitioner James D. Quarterman, prepayment credits were also determined in this statement attached to the notice of deficiency. For December

Certain documents have been stipulated and are found accordingly. The stipulation of facts and exhibits are incorporated herein by reference.

Petitioners were residents of Jacksonville, Florida, when their petitions were filed in these cases.

Petitioners' argument are without merit, and we therefore uphold the deficiencies and additions to tax in this case.

The determination made by Respondent in his notice of deficiency are presumed correct. The burden of proof is on Petitioner to show that those determination are wrong. Welch v. Helvering, 290 US 111 (1933); Rule 142(a).

Petitioner offered no proof whatsoever in this case and relies on his statement that he is not a person who is liable for the federal income tax.

Petitioners' also has the burden of proof with respect to all additions to tax.

Respondent has also moved for damages in each of the cases of Petitioner James D. Quarterman and Barbara Jean Quarterman, and we must consider whether in the circumstances these proceeding and have asserted in their defense to Commissioner's determination nothing but frivolous

present in this case the Court should award damages to the United States under Section 6673.

Under Section 6673 this Court is permitted to impose damages up to \$5,000 whenever the proceedings have been instituted or maintained by the taxpayer primarily for delay or the taxpayer's position in such proceeding is frivolous or groundless.

Here the Petitioners have instituted contentions. Petitioners with genuine controversies before this Court have been delayed while we have considered this case.

Arguments identical to those raised by Petitioners have been consistently rejected by this Court as being without merit.

case of Barbara Jean Quarterman, Docket Number 17080-99.

Petitioners should have known that their claims in this case were frivolous; therefore, based on the record in this case we must conclude that the maximum damages authorized by law of \$5,000 are appropriate in each of these cases, and the Court will award \$5,000 to the United States in Docket Number 17078-88, in the case of James D. Quarterman, and \$5,000 will be awarded to the United States for damages pursuant to Section 6673 in the

A decision for the Respondent will be entered, including the award of \$5,000 of damages to the United States in each decision in each docket in these cases.

This will conclude the Court's oral finding of fact and opinion.

(Whereupon, this bench opinion was concluded.)

(Whereupon, at 9:56 p.m., this hearing was concluded.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 89-8321
Non-Argument Calendar

Tax Ct. Nos. 17078-88, 17080-88

JAMES D. QUARTERMAN and
BARBARA JEAN QUARTERMAN,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

Appeal from a Decision of the
United States Tax Court

(October 11, 1989)

Before VANCE, CLARK and EDMONDSON,
Circuit Judges.

PER CURIAM:

AFFIRMED. See Eleventh Circuit Rule 36-1

"Cost taxed against petitioners-
appellants."

Judgment Entered: October 11, 1989
For the Court: Miquel J. Cortez, Clerk

By: Karleen McNabe Deputy Clerk

ISSUED AS MANDATE: JAN 4 1990